

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE**

KATHRYN L. FITZGIBBON,  
LAUREN M. FLEMING, and  
ALL SIMILARLY SITUATED CURRENT  
AND FORMER EMPLOYEES OF  
ING BANK, fsb, AND ITS WHOLLY  
OWNED SUBSIDIARIES,

Plaintiffs,

v.

ING BANK, fsb, (a Delaware corporation),  
and ALL OTHER WHOLLY OWNED  
SUBSIDIARIES OF ING BANK, fsb,  
WHICH HAVE EMPLOYED  
SIMILARLY SITUATED CURRENT  
AND FORMER EMPLOYEES SINCE  
November 15, 2004,

Defendants.

C.A. NO. 07-735 (JJF)

JURY TRIAL DEMANDED

**SCHEDULING ORDER**

The parties having satisfied their obligations under Fed. R. Civ. P. 26 (f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties will exchange by **February 29, 2008** the information required by Fed. R. Civ. P. 26 (a) (1) and D. Del. LR 16.2.
2. **Joinder of other Parties.** All motions to join other parties shall be filed no later than thirty (30) days after completion of fact discovery.
3. **Discovery.**

(a) Exchange and completion of interrogatories, identification of all fact witnesses and document production shall be commenced so as to be completed by **August 15, 2008.**

(b) Maximum of **25** interrogatories by each party to any other party.

(c) Maximum of **40** interrogatories by each named plaintiff to any other party.

(d) Maximum of **25** requests for admission by each party to any other party.

(e) Maximum of **10** depositions by plaintiffs and **10** by defendant.

Depositions shall not commence until the discovery required by Paragraph 4 (a, b and c) are completed. All depositions of fact witnesses must be completed by **October 15, 2008.**

(f) Reports from retained experts required by Fed. R. Civ. P. 26 (a) (2) are due from the plaintiff by **November 15, 2008**; from the defendants **December 15, 2008.**

(g) With respect to the issuance of electronic discovery, Defendant shall produce a witness by **February 29, 2008** to testify pursuant to Rule 30(b)(6) concerning the following topics:

(i) all electronic and machine-readable databases and files containing personnel and/or human resource information for public relations associates and marketing associates employed by Defendant from November 15, 2004 to the present including all payroll and time-keeping systems;

(ii) all personnel and/or human resource file-keeping and information system(s), whether in hard copy or electronic form, including the location where such data may be stored, and the format in which it is stored, from November 15, 2004 to the present;

(iii) Defendant's electronic information and technology systems, including, without limitation, its computer and email systems, from November 15, 23004 to the present; and

(iv) Defendant's preservation of all information relevant to this litigation, whether in hard copy or electronic form.

Within fifteen (15) days after receiving the final transcript of this deposition, Plaintiffs shall propose a written electronic discovery plan to Defendant. Defendant shall respond within ten (10) business days. Thereafter, the parties shall confer. If an agreement cannot be reached, Plaintiffs may file a motion to compel the production of electronic information.

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties.

#### **4. Discovery Disputes.**

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages. An Answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at [jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov) that the parties have completed briefing.

(d) Upon receipt of the movant's email, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before **February 15, 2008**.

6. Plaintiffs' motion for class certification shall be filed by **January 15, 2009**.

7. In the event Plaintiffs' motion for class certification is granted, the parties shall confer and propose a schedule to the Court for the completion of additional discovery related to class member claims and any needed adjustment of other deadlines contained herein. At the end of this additional discovery period, defendant shall have the opportunity to file a motion for decertification.

8. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before **March 15, 2009**. Answering Briefs shall be due twenty-one (21) days after the Opening Brief is filed and Reply Briefs shall be filed eleven (11) days after the Answering Briefs are filed. No case dispositive motion may be filed more than fifteen (15) days from the above date without leave of the Court.

8. **Applications by Motion.**

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of

Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: [jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov). The e-mail shall provide a short statement describing the emergency.

9. **Pretrial Conference and Trial.** After reviewing the parties' Proposed Scheduling Order, the Court will schedule a Pretrial Conference.

The Court will determine whether the trial date should be scheduled when the Scheduling Order is entered or at the Pretrial Conference. If scheduling of the trial date is deferred until the Pretrial Conference, the parties and counsel shall anticipate and prepare for a trial to be held within sixty (60) to ninety (90) days of the Pretrial Conference.

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DATE

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UNITED STATES DISTRICT JUDGE